

## § 218.123

this section, by more than 10 percent; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in paragraphs (c)(4) and (5) of this section by more than 10 percent. A running calculation/estimation of takes of each species over the course of the years covered by the rule must be maintained.

(4) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—6,975 (an average of 1,395 annually);

(B) Fin whale (*Balaenoptera physalus*)—55185 (an average of 11,037 annually);

(C) Blue whale (*Balaenoptera musculus*)—10 (an average of 2 annually);

(D) Sei whale (*Balaenoptera borealis*)—40 (an average of 8 annually);

(E) Minke whale (*Balaenoptera acutorostrata*)—3,405 (an average of 681 annually);

(F) Gray whale (*Eschrichtius robustus*)—1,940 (an average of 388 annually); and

(G) North Pacific right whale (*Eubalaena japonica*)—10 (an average of 2 annually).

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—1,645 (an average of 329 annually);

(B) Killer whale (*Orcinus orca*)—53,245 (an average of 10,649 annually);

(C) Harbor porpoise (*Phocoena phocoena*)—27,200 (an average of 5,440 annually);

(D) Baird's beaked whales (*Berardius bairdii*)—2,435 (an average of 487 annually);

(E) Cuvier's beaked whales (*Ziphius cavirostris*)—11,560 (an average of 2,312 annually);

(F) Stejneger's beaked whales (*Mesoplodon stejnegeri*)—11,565 (an average of 2,313 annually);

(G) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—84,955 (an average of 16,991 annually); and

(H) Dall's porpoise (*Phocoenoides dalli*)—1,031,870 (an average of 206,374 annually).

(iii) Pinnipeds:

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(A) Steller sea lion (*Eumetopias jubatus*)—55,540 (an average of 11,108 annually)

(B) California sea lion (*Zalophus californianus*)—10 (an average of 2 annually);

(C) Harbor seal (*Phoca vitulina richardsi*)—10 (an average of 2 annually);

(D) Northern elephant seal (*Mirounga angustirostris*)—10,345 (an average of 2,069 annually); and

(E) Northern fur seal (*Callorhinus ursinus*)—771,010 (an average of 154,202 annually).

(5) Level A Harassment and/or mortality of no more than 15 beaked whales (total), of any of the species listed in § 218.122(c)(1)(ii)(D) through (F) over the course of the 5-year regulations.

## § 218.123 Prohibitions.

No person in connection with the activities described in § 218.120 may:

(a) Take any marine mammal not specified in § 218.122(c);

(b) Take any marine mammal specified in § 218.122(c) other than by incidental take as specified in §§ 218.122(c)(1), (c)(2), and (c)(3);

(c) Take a marine mammal specified in § 218.122(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 218.127 of this chapter.

## § 218.124 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in § 218.120(c), the mitigation measures contained in a Letter of Authorization issued under §§ 216.106 and 218.127 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) Personnel Training (for all Training Types):

(i) All commanding officers (COs), executive officers (XOs), Lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-Submarine Warfare (ASW) helicopter crews shall complete

the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge Lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(ii) Navy Lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968-D).

(iii) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced Lookout. Following successful completion of this supervised training period, Lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as Lookouts can be counted among required Lookouts as long as supervisors monitor their progress and performance.

(iv) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if marine species are spotted.

(v) All Lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(vi) All COs, XOs, and officers standing watch on the bridge shall have reviewed the Marine Species Awareness Training material prior to a training event employing the use of MFAS/HFAS.

(2) General Operating Procedures (for all Training Types):

(i) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species protective measures.

(ii) COs shall make use of marine species detection cues and information to limit interaction with marine mam-

mals to the maximum extent possible consistent with safety of the ship.

(iii) While underway, surface vessels shall have at least two Lookouts with binoculars; surfaced submarines shall have at least one Lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, Lookouts shall watch for and report to the OOD the presence of marine mammals.

(iv) On surface vessels equipped with mid-frequency active sonar, pedestal mounted "Big Eye" (20×110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(v) Personnel on Lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(vi) After sunset and prior to sunrise, Lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(vii) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a "safe speed," which means the speed at which the CO can maintain crew safety and effectiveness of current operational directives, so that the vessel can take action to avoid a collision with any marine mammal.

(viii) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take all reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Such action may include changing speed and/or direction and are dictated by environmental and other conditions (*e.g.*, safety, weather).

(ix) Navy aircraft participating in exercises at sea shall conduct and maintain surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(x) All marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate when it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(xi) Naval vessels shall maneuver to keep at least 1,500 ft (500 yd or 457 m) away from any observed whale in the vessel's path and avoid approaching whales head-on. These requirements do not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, mine-sweeping activities, replenishment while underway and towing activities that severely restrict a vessel's ability to deviate course. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale. Given rapid swimming speeds and maneuverability of many dolphin species, naval vessels would maintain normal course and speed on sighting dolphins unless some condition indicated a need for the vessel to maneuver.

(3) Operating Procedures (for Anti-submarine Warfare (ASW) Operations):

(i) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(ii) All surface ships participating in ASW training events shall have, in addition to the three personnel on watch noted in paragraph (i), at least two additional personnel on watch as Lookouts at all times during the exercise.

(iii) Personnel on Lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(iv) Personnel on Lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to

the Officer of the Deck, since any object or disturbance (*e.g.*, trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine mammal that may need to be avoided as warranted.

(v) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(vi) During mid-frequency active sonar operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(vii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yd (183 m) of the sonobuoy.

(viii) Helicopters shall observe/survey the vicinity of an ASW exercise for 10 minutes before the first deployment of active (dipping) sonar in the water.

(ix) Helicopters shall not dip their sonar within 200 yd (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yd (183 m) of the sound source after pinging has begun.

(x) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard Lookout, or acoustically) within 1,000 yd (914 m) of the sonar dome (the bow), the ship or submarine shall limit active transmission levels to at least 6 decibels (dB) below normal operating levels for that source (*i.e.*, limit to at most 229 dB for AN/SQS-53 and 219 for AN/SQS-56, *etc.*).

(A) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the 1,000-yd (914 m) exclusion zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1,829 m) beyond the location of the last detection.

(B) Should a marine mammal be detected within 500 yd (457 m) of the sonar dome, active sonar transmissions shall be limited to at least 10 dB below

the equipment's normal operating level (*i.e.*, limit to at most 225 dB for AN/SQS-53 and 215 for AN/SQS-56, *etc.*). Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the 500-yd (457 m) safety zone (at which point the 6-dB powerdown applies until the animal leaves the 1,000-yd (914 m) safety zone), has not been detected for 30 minutes, or the vessel has transited more than 2,000 yd (1,829 m) beyond the location of the last detection.

(C) Should the marine mammal be detected within 200 yd (183 m) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the animal has been seen to leave the 200-yd (183 m) safety zone (at which point the 10-dB or 6-dB powerdowns apply until the animal leaves the 500-yd (457 m) or 1,000-yd (914 m) safety zone, respectively), has not been detected for 30 minutes, or the vessel has transited more than 2,000 yd (1,829 m) beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(xi) Prior to start up or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xii) Active sonar levels (generally)—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xiii) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving MFAS.

NOTE TO PARAGRAPH (a)(3): If the need for power-down should arise (as detailed in 218.114(a)(3)(x)) when the Navy is operating a hull-mounted or sub-mounted source above 235 db (infrequent), the Navy shall follow the

requirements as though they were operating at 235 dB—the normal operating level (*i.e.*, the first power-down will be to 229 dB, regardless of at what level above 235 dB active sonar was being operated).

(4) Sinking Exercise:

(i) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(ii) An exclusion zone with a radius of 1.0 nm (1.9 km) shall be established around each target. An additional buffer of 0.5 nm (0.9 km) will be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which will extend beyond the buffer zone by an additional 0.5 nm (0.9 km), shall be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(iii) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol shall be as follows:

(A) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy's Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(B) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy's marine mammal training program for Lookouts.

(C) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring shall be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys shall be re-seeded as

necessary throughout the exercise. Additionally, if submarines are present, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE shall be informed of any aural detection of marine mammals and shall include this information in the determination of when it is safe to commence the exercise.

(D) On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence 2 hours prior to the first firing.

(E) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing may commence until the OCE declares the safety and exclusion zones free of marine mammals.

(F) If a marine mammal is observed within the exclusion zone, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it can be assumed to have left the exclusion zone. The OCE shall determine if the marine mammal is in danger of being adversely affected by commencement of the exercise.

(G) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any marine mammal. If marine mammals are sighted within the exclusion zone or buffer zone, the OCE shall be notified, and the procedure described above shall be followed.

(H) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

(iv) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability.

(v) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, Beaufort Sea State 3 or less. In the event of a Beaufort Sea State 4 or above, survey efforts shall be increased within the zones. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(vi) The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

(vii) In the event that any marine mammals are observed to be harmed in the area, NMFS shall be notified as soon as feasible following the stranding communication protocol. A detailed description of the animal shall be taken, the location noted, and if possible, photos taken of the marine mammal. This information shall be provided to NMFS via the Navy's regional environmental coordinator for purposes of identification (see the draft Stranding Plan for detail).

(viii) An after action report detailing the exercise's time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event shall be submitted to NMFS.

(5) Surface-to-Surface Gunnery (up to 5-inch Explosive Rounds):

(i) For exercises using targets towed by a vessel, target-towing vessels shall maintain a trained Lookout for marine mammals when feasible. If a marine mammal is sighted in the vicinity, the tow vessel shall immediately notify the firing vessel, which shall suspend the exercise until the area is clear.

(ii) A 600-yd (585 m) radius buffer zone shall be established around the intended target.

(iii) From the intended firing position, trained Lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable. Due to the distance between the firing position and the buffer zone, Lookouts are only expected to visually detect breaching whales, whale blows, and large pods of dolphins and porpoises.

(iv) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within it.

(6) Surface-to-Surface Gunnery (non-explosive rounds):

(i) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(ii) From the intended firing position, trained Lookouts shall survey the buffer zone for marine mammals prior

to commencement and during the exercise as long as practicable.

(iii) If available, target-towing vessels shall maintain a Lookout (unmanned towing vessels will not have a Lookout available). If a marine mammal is sighted in the vicinity of the exercise, the tow vessel shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(iv) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within the target area and the buffer zone.

(7) Surface-to-Air Gunnery (Explosive and Non-explosive Rounds):

(i) Vessels shall orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.

(ii) Vessels shall expedite the attempt to recover any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.

(iii) Target-towing aircraft shall maintain a Lookout if feasible. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(8) Air-to-Surface Gunnery (Explosive and Non-explosive Rounds):

(i) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(ii) If surface vessels are involved, Lookout(s) shall visually survey the buffer zone for marine mammals prior to commencement and during the exercise.

(iii) Aerial surveillance of the buffer zone for marine mammals shall be conducted prior to commencement of the exercise. Aerial surveillance altitude of 500 ft to 1,500 ft (152–456 m) is optimum. Aircraft crew/pilot shall maintain visual watch during exercises. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas.

(iv) The exercise shall be conducted only if marine mammals are not visible within the buffer zone.

(9) Small Arms Training (Grenades, Explosive and Non-explosive Rounds)—

Lookouts shall visually survey for marine mammals. Weapons shall not be fired in the direction of known or observed marine mammals.

(10) Air-to-Surface At-sea Bombing Exercises (explosive bombs and rockets):

(i) If surface vessels are involved, trained Lookouts shall survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yd (914 m) of known or observed marine mammals.

(ii) A 1,000-yd (914 m) radius buffer zone shall be established around the intended target.

(iii) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited: Aircraft must be able to see ordnance impact areas. Survey aircraft shall employ most effective search tactics and capabilities.

(iv) The exercise shall be conducted only if marine mammals are not visible within the buffer zone.

(11) Air-to-Surface At-Sea Bombing Exercises (Non-explosive Bombs and Rockets):

(i) If surface vessels are involved, trained Lookouts shall survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yd (914 m) of known or observed marine mammals.

(ii) A 1,000-yd (914 m) radius buffer zone shall be established around the intended target.

(iii) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited: Aircraft must be able to actually see ordnance impact areas. Survey aircraft shall employ most effective search tactics and capabilities.

(iv) The exercise shall be conducted only if marine mammals are not visible within the buffer zone.

(12) Air-to-Surface Missile Exercises (explosive and non-explosive):

(i) Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) or lower, if safe to do so, and at the slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas.

(ii) Explosive ordnance shall not be targeted to impact within 1,800 yd (1646 m) of sighted marine mammals.

(13) Aircraft Training Activities Involving Non-Explosive Devices:

(i) Non-explosive devices such as some sonobuoys and inert bombs involve aerial drops of devices that have the potential to hit marine mammals if they are in the immediate vicinity of a floating target. The exclusion zone (200 yd), therefore, shall be clear of marine mammals and around the target location.

(ii) [Reserved]

(14) Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER):

(i) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 500 yd (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

(ii) Crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the intended sonobuoy pattern where a post (source/receiver sonobuoy pair) shall be deployed within 1,000 yd (914 m) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yd (914 m) of the intended post position, the Navy shall relocate the explosive source sonobuoy (AN/SSQ-110A) (source) with the receiver.

(iv) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include

monitoring of own-aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.

(v) Aural Detection—If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(vi) Visual Detection—If marine mammals are visually detected within 1,000 yd (914 m) of the explosive source sonobuoy (AN/SSQ-110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000-yd (914 m) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000-yd (914 m) safety buffer.

(vii) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews shall ensure that a 1,000-yd (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy shall self-scuttle using the secondary or tertiary method.

(ix) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ-110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(15) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the GoA TMAA” (available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), which is incorporated herein by reference, to include the following measures:

(i) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §216.271) occurs during a Major Training Exercise (MTE) (as defined in the Stranding Plan, meaning including Multi-strike group exercises, Joint Expeditionary exercises, and Marine Air Ground Task Force exercises in the GoA TMAA), the Navy shall implement the procedures described below.

(A) The Navy shall implement a Shutdown (as defined in the Stranding Response Plan for GoA TMAA) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the GoA TMAA Stranding Communication Protocol that a USE (as defined in the Stranding Response Plan for the GoA TMAA) involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(B) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(C) If the Navy finds an injured or dead marine mammal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behavior(s) (if alive), and photo or video of the animal(s) (if available). Based on the information provided, NMFS shall determine if, and

advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(D) In the event, following a USE, that: Qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS/HFAS activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.

(ii) Within 72 hrs of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the GoA TMAA Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS/HFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hrs prior to the USE event. Information not initially available regarding the 80 nm (148 km) and 72 hrs prior to the event shall be provided as soon as it becomes available. The Navy shall provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(iii) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism, that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances.

(b) [Reserved]